



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ISC Defense Systems, Inc.
File: B-224564
Date: February 17, 1987

DIGEST

An agency's decision to exercise an option for an additional quantity that is based upon an examination of the option prices for this quantity available under existing contracts is reasonable and proper where the only mobilization base producers for the item participated in the competition for the base quantity, and the option for the additional quantity is exercised only 4 days after award.

DECISION

ISC Defense Systems, Inc., protests the U.S. Army Armament, Munitions & Chemical Command's exercise of an option to procure an additional quantity of items from Motorola, Inc., under contract No. DAAA09-86-C-1476. ISC contends that the contracting activity failed to follow requisite procedures when exercising the option.

We deny the protest.

The Army issued the underlying solicitation request, for proposals (RFP) No. DAAA89-86-R-1316, on August 1, 1986, for 47,000 FMU-139/13 Electronic Bomb Fuzes. It restricted the procurement to the current mobilization base producers, Motorola, Inc., and ISC, under authority of 10 U.S.C. § 2304(c)(3) (Supp. III 1985) and the Federal Acquisition Regulation (FAR), 48 C.F.R. § 6.302-3 (1986). In order to keep both of these contractors in production and to meet the required delivery schedule, the Army structured the RFP to result in a split-award, either 60-40 percent or 50-50 percent. It therefore requested both Motorola and ISC to submit bids for 3 different alternates, namely, 60 percent of the required quantity or 29,400 units; 50 percent or 24,500 units; and 40 percent or 19,600 units. Moreover, the two firms were to submit prices for these alternates both with and without first article testing. The RFP also contained an

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option clause permitting the government to order up to 100 percent of the basic quantity for each alternate. Award, however, was to be based solely on the basic quantity price.

Both eligible producers submitted proposals. Their prices for the different alternates were as follows:

Alt.	Quantity	Offeror	Unit Price With/Without First Article	Option ^{1/} Price
I.	29,400(60%)	Motorola	\$585.84/\$574.00	\$574.00
	29,400(60%)	ISC	\$602.10/\$588.89	\$560.29
II.	24,500(50%)	Motorola	\$609.20/\$595.00	\$595.00
	24,500(50%)	ISC	\$620.24/\$604.38	\$570.04
III.	19,600(40%)	Motorola	\$646.74/\$629.00	\$629.00
	19,600(40%)	ISC	\$647.66/\$627.84	\$584.96

During evaluation, the contracting activity decided to waive the first article test requirement for Motorola, but not for ISC. Based on this fact and the schedule of prices set forth above, the agency decided to award Motorola a contract under Alternate I (60 percent) at a total price of \$16,875,600, and ISC a contract under Alternate III (40 percent) at a price of \$12,694,136. Both of those contracts were awarded on September 26, 1986.

On September 29 the contracting activity determined that additional funds in the amount of \$19,839,265.92 were available, permitting it to acquire an additional 29,196 units. The contracting officer determined that it was in the best interest of the government, price and other factors considered, to acquire this entire additional quantity from Motorola under the option clause of its contract. Accordingly, the Army exercised the option on September 30, 1986.

ISC contends that this action violates the FAR provision entitled Exercise of Options, 48 C.F.R. § 17.207, which requires, among other things, a determination that the exercise of an option is the most advantageous method of fulfilling the government's needs, all factors considered. Specifically, the protester alleges that the contracting officer failed to abide by the terms of § 17.207(d)(2),

^{1/} Motorola did not specify prices for the option quantities and, therefore, under solicitation clause I-2, the prices specified for the base quantities were to be Motorola's prices for any quantities awarded pursuant to the option clause.

which, the protester states, requires the government to conduct an informal analysis of prices available in the market to ascertain whether the option price is indeed the most advantageous. The contracting officer, the protester continues, therefore could not simply examine the prices available under existing contracts, but was required to make a reasonable and good faith effort to determine the advantages of exercising the option.

In the present case, ISC contends, the contracting officer did not make such an effort. Considering that there were only two available mobilization base producers, ISC concludes that the contracting officer, before exercising the option, should have contacted these two sources to determine their respective prices for the additional quantity. The protester adds that the failure was especially egregious, given that ISC's quoted price for the additional quantity to be acquired, \$560.29 per unit, was less than Motorola's, \$574.

ISC further contends that the contracting officer's action conflicts with decisions of our Office, particularly Allis-Chalmers Manufacturing, Co., B-169921, Aug. 14, 1970. ISC states that this decision prohibits the government from exercising an option where an unsuccessful offeror's proposed option price is less than the price at which the option is to be exercised without consideration of the lower option price originally proposed. Hence, the protester argues, the government is clearly required to evaluate option prices initially proposed by all offerors despite the fact that the prices are no longer available to the government.

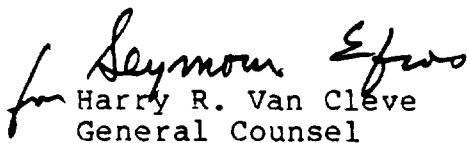
ISC has misconstrued the applicable regulations. The intent of these regulations is not to afford a firm that offered a high price for a base contract an opportunity to remedy this business judgment by undercutting the options price of the successful offeror. Rather, the intent of the regulations is to ensure that the contracting officer obtains a price most advantageous to the government for the option quantity. Cf. Jaxon, Inc., B-213998, July 10, 1984, 84-2 CPD ¶ 33. The contracting officer may make such a determination, for example, by conducting an informal analysis of prices or an examination of the market, 48 C.F.R. § 17.207(d)(2), or on the basis that the time between award of the contract containing the option and the exercise of the option is so short that it indicates that the option price is most advantageous. 48 C.F.R. § 17.207(d)(3). Thus, while it may be appropriate in certain circumstances for a contracting officer to contact

all available sources to determine whether an option price is most advantageous to the government, such a process is not mandated by regulation. Decisions rendered by our Office must be interpreted in a consistent manner with applicable regulatory provisions.

Here, the record reflects that the contracting officer's decision to exercise the option was primarily based upon an examination of the option prices set forth by Motorola and ISC in their respective proposals. In view of this analysis, the contracting officer concluded that Motorola's option price of \$574 a unit represented the most advantageous offer to the government for the additional quantity of fuzes to be procured. The only other price available to the government under existing contracts was ISC's offer of \$584.76 a unit for an additional quantity of 19,600 fuzes. ISC's lower option price of \$560.29 a unit for an additional 29,400 units was not available to the government under any contract, as this price was predicated upon ISC receiving an award for 60 percent of the base quantity, rather than the 40 percent that it actually received.

We conclude that the contracting officer's determination was consistent with applicable regulations, specifically 48 C.F.R. § 17.207(d)(3). Considering that Motorola and ISC — were the only sources available and in view of the fact that the option for the additional quantity was to be exercised only 4 days after the award of the base contract, the contracting officer was justified in assuming that Motorola's option price was the lowest price obtainable for the additional quantity of fuzes. Accordingly, we find the Army's exercise of the option in favor of Motorola to be reasonable and proper. See Astronautics Corp. of America, B-222414.2, et al., Aug. 5, 1986, 86-2 CPD ¶ 147.

The protest is denied.


Harry R. Van Cleve
General Counsel